

Message Text

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LIMITED OFFICIAL USE SECTION 1 OF 3 OECD PARIS 8425

PASS EB FOR BOEKER; TREASURY FOR GRIFFIN

EO 11652: N/A
TAGS: EINV, OECD
SUBJECT: COMMITTEE ON INTERNATIONAL INVESTMENT AND
MNE'S (CIME), ADDITIONAL DOCUMENTATION (RE BADGER
BELGIUM) FOR MEETING, MARCH 31-APRIL 1

REF: OECD PARIS 6357

FOLLOWING IS TEXT (IN PRELIMINARY TRANSLATION) OF LETTER
FROM BELGIAN DELEGATION TO OECD SECRETARY-GENERAL RE-
QUESTING NEW AGENDA ITEM REGARDING BADGER BELGIUM FOR
MARCH 31-APRIL 1 CIME MEETING (REFTEL), FOLLOWED BY TEXT
OF BELGIAN NOTE AND TWO ANNEXES (ALSO IN PRELIMINARY
TRANSLATION) TO BE INTRODUCED WITH THIS NEW AGENDA ITEM.
TEXT FOLLOWS.

PARIS, 18TH MARCH, 1977

SIR,

I AM ENCLOSING A MEMORANDUM FROM MY GOVERNMENT CONCERNING
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THE APPLICATION OF THE GUIDELINES FOR MULTINATIONAL ENTER-
PRISES.

IT WOULD BE GREATLY APPRECIATED IF YOU WOULD KINDLY CIR-
CULATE THIS MEMORANDUM AND ITS ANNEXES AS SOON AS POSSIBLE
TO MEMBERS OF THE COMMITTEE ON INTERNATIONAL INVESTMENT
AND MULTINATIONAL ENTERPRISES SO THAT IT MAY BE DISCUSSED

AS A SEPARATE ITEM ON THE AGENDA FOR THE MEETING OF 31ST MARCH AND 1ST APRIL, 1977.

IT WOULD ALSO BE APPRECIATED IF YOU COULD LIKEWISE CIRCULATE THIS MEMORANDUM TO MEMBERS OF THE BUSINESS AND INDUSTRY ADVISORY COMMITTEE TO THE OECD AND THE TRADE UNION ADVISORY COMMITTEE TO THE OECD.

IN VIEW OF THE IMPORTANCE THAT MY GOVERNMENT ATTACHES TO THIS MATTER, MR. MARK EYSKENS, SECRETAIRE D'ETAT A L'ECONOMIE REGIONALE, WILL REPRESENT BELGIUM AT THE MEETING FOR THE CONSIDERATION OF THIS ITEM ON THE AGENDA.

I SHOULD ACCORDINGLY BE GRATEFUL IF YOU WOULD KINDLY MAKE THE NECESSARY ARRANGEMENTS FOR THE DISCUSSION TO BE HELD AT THE END OF THE MORNING OF THE FIRST DAY, I.E. ABOUT 11 A.M.

YOURS FAITHFULLY,
A. LONNOY
PERMANENT REPRESENTATIVE

COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES

MEMORANDUM FROM THE BELGIAN DELEGATION

1. IN THE DECLARATION ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES, ADOPTED BY OUR GOVERNMENTS ON LIMITED OFFICIAL USE

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21ST JUNE, 1976, MEMBER COUNTRIES AGREED THAT OECD COUNTRIES SHOULD STRENGTHEN THEIR COOPERATION AND CONSULTATION PROCEDURES WITH RESPECT TO ISSUES RELATING TO INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES.

AT THAT TIME OECD MEMBER COUNTRIES DECLARED THEIR READINESS TO CONSULT ONE ANOTHER ON THE ABOVE MATTERS IN CONFORMITY WITH THE DECISION OF THE COUNCIL RELATING TO INTER-GOVERNMENTAL CONSULTATION PROCEDURES ON THE GUIDELINES FOR MULTINATIONAL ENTERPRISES. BY ITS DECISION OF 22ND DECEMBER, 1976, THE COUNCIL GAVE TO THE COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES A MANDATE TO THE EFFECT THAT IT SHOULD PERIODICALLY UNDERTAKE EXCHANGES OF VIEWS ON ISSUES RELATING TO THE GUIDELINES AND ON EXPERIENCE ACQUIRED IN THEIR APPLICATION. THE COMMITTEE WAS TO REPORT PERIODICALLY TO THE COUNCIL ON THESE MATTERS.

2. EXPERIENCE OF THE APPLICATION OF THE GUIDELINES BY

MULTINATIONAL ENTERPRISES CAN ONLY BE ACQUIRED BY ASKING THE COMMITTEE TO GIVE ITS OPINION ON BEHAVIOR OR ACTION BY AN INDIVIDUAL ENTERPRISE DEEMED TO BE CONTRARY TO THE GUIDELINES.

IT IS FULLY UNDERSTOOD THAT, IN ACCORDANCE WITH THE DECISION OF THE COUNCIL, THE COMMITTEE CANNOT REACH ANY CONCLUSIONS AS TO THE BEHAVIOR OF THE ENTERPRISE IN QUESTION. HOWEVER, IT IS ESSENTIAL THAT MEMBERS OF THE COMMITTEE SHOULD BE ABLE TO EXPRESS THEIR VIEWS ON THE EXTENT TO WHICH SUCH BEHAVIOR IS COMPATIBLE WITH THE SPIRIT OR LETTER OF CERTAIN RULES OF GOOD CONDUCT CONTAINED IN THE GUIDELINES.

3. THE BELGIAN GOVERNMENT IS HEREWITH SUBMITTING A MEMORANDUM ON A SPECIFIC CASE FOR THE ATTENTION OF MEMBERS OF THE COMMITTEE ON INTERNATIONAL INVESTMENT AND LIMITED OFFICIAL USE

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MULTINATIONAL ENTERPRISES. THIS MEMORANDUM CONSISTS OF TWO PARTS.

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PASS EB FOR BOEKER; TREASURY FOR GRIFFIN

IN THE FIRST PART, THE BELGIAN GOVERNMENT DEFINES ITS

INTERPRETATION OF PARAGRAPHS 7 AND 8 OF THE INTRODUCTION TO THE GUIDELINES AND OF PARAGRAPHS 6 AND 9 OF THE SECTION ON "EMPLOYMENT AND INDUSTRIAL RELATIONS".

THE SECOND PART BRIEFLY DESCRIBES THE FACTS WHICH HAVE LED THE BELGIAN GOVERNMENT TO SUBMIT THIS INTERPRETATION FOR THE COMMITTEE'S OPINION.

4. THE BELGIAN GOVERNMENT WOULD LIKE A CONSTRUCTIVE EXCHANGE OF VIEWS OF THIS INTERPRETATION TO BE HELD IN THE COMMITTEE, THUS ENABLING IT TO DEFINE ITS OWN POSITION MORE CLEARLY AND PROVIDING VALUABLE INFORMATION FOR THE GOVERNMENTS OF OTHER MEMBER COUNTRIES WHICH MIGHT BE CONFRONTED WITH A SIMILAR SITUATION.

5. IT IS BY NO MEANS THE INTENTION OF THE BELGIAN GOVERNMENT TO GET THE COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES TO PASS JUDGMENT ON THE ENTERPRISE REFERRED TO IN THE ANNEX.

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HOWEVER, WE DRAW THE COMMITTEE'S ATTENTION TO THE FACT THAT THE PRESS, PUBLIC OPINION, EMPLOYERS' ASSOCIATIONS, TRADE UNIONS AND THE BELGIAN PARLIAMENT ALL ATTACH GREAT IMPORTANCE TO THIS MATTER AND WILL BE CLOSELY FOLLOWING THE DEVELOPMENTS IN TERMS OF PRACTICAL EFFECTS ON THE CONDUCT OF MULTINATIONAL ENTERPRISES.

6. BELGIUM'S ATTITUDE TOWARDS INTERNATIONAL INVESTMENT HAS ALWAYS BEEN INSPIRED BY CONFIDENCE AND FAIRNESS. MOREOVER, THE ACTIVITIES OF MULTINATIONAL ENTERPRISES HAVE MADE A MAJOR CONTRIBUTION TO THE ECONOMIC EXPANSION OF OUR COUNTRY WHICH, OWING TO ITS SIZE, IS EXTREMELY OPEN TO INTERNATIONAL TRADE. OUR GOVERNMENT INTENDS TO PURSUE THIS ACTION WHICH AIMS AT INCREASING COOPERATION AMONG OECD MEMBER COUNTRIES.

7. IN THE ABSENCE OF ENERGETIC ACTION BY OUR GOVERNMENTS, THROUGH THE COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES, OTHER BODIES - WHETHER APPROPRIATE OR NOT - WILL VERY QUICKLY MANIFEST THEIR WILLINGNESS TO DRAW UP ANOTHER CODE OF CONDUCT THAT WOULD BE MORE EFFECTIVE AND CREDIBLE. THE TEXT PREPARED BY THE COMMITTEE FOR THE MEETING IN JUNE 1976 CANNOT BE REGARDED AS AN END IN ITSELF AND ITS APPLICATION MUST BE SEEN TO GIVE RISE TO TANGIBLE RESULTS.

8. THE NEXT MEETING OF THE COMMITTEE IS TO BE PRECEDED BY CONSULTATIONS WITH THE BUSINESS AND INDUSTRY ADVISORY

COMMITTEE TO THE OECD AND THE TRADE UNION ADVISORY COMMITTEE TO THE OECD. THE BELGIAN GOVERNMENT WOULD LIKE THE VIEWS OF THESE TWO ORGANIZATIONS ON THE GUIDELINES IN QUESTION TO BE MADE KNOWN, WITH A VIEW TO OBTAINING A DIVERSIFIED BASIS OF OPINION ON WHICH TO ESTABLISH THE POSITION TO BE ADOPTED IN SIMILAR CASES. IT IS FOR THIS REASON THAT THE BELGIAN GOVERNMENT HAS REQUESTED THE SECRETARY-GENERAL OF THE OECD TO SEND THIS MEMORANDUM TO LIMITED OFFICIAL USE

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THE TWO ADVISORY BODIES IN QUESTION.

9. AS PROVIDED IN THE DECISION OF 21ST JUNE, 1976, WE PROPOSE TO MEMBERS OF THE COMMITTEE THAT THE ENTERPRISE IN QUESTION SHOULD BE GIVEN A HEARING WITH A VIEW TO EXPRESSING ITS VIEWS ON THE APPLICATION OF THE GUIDELINES.

10. IN ACCORDANCE WITH THE SAME DECISION, THE BELGIAN GOVERNMENT WOULD LIKE THE COMMITTEE TO SET OUT MEMBER COUNTRIES' VIEWS ON THE MATTER IN A REPORT TO THE COUNCIL.

ANNEX I

THE BELGIAN GOVERNMENT'S INTERPRETATION REGARDING PARAS. 7 AND 8 OF THE INTRODUCTION TO THE GUIDELINES AND PARAS. 6 AND 9 OF THE SECTION "EMPLOYMENT AND INDUSTRIAL RELATIONS"

1. THE SUBSIDIARY OF A MULTINATIONAL ENTERPRISE IS SUBJECT TO THE LAWS OF THE HOST COUNTRY IN THE CASE OF THE CESSATION OF ITS ACTIVITIES AND IN THE CASE OF THE CLOSURE OF THIS ENTITY INVOLVING COLLECTIVE LAY-OFFS OR DISMISSALS. THIS IS IN CONFORMITY WITH PARA. 7 OF THE INTRODUCTION WHICH STATES THAT "THE ENTITIES OF A MULTINATIONAL ENTERPRISE LOCATED IN VARIOUS COUNTRIES ARE SUBJECT TO THE LAWS OF THESE COUNTRIES".

THE GUIDELINES ALSO LAY DOWN THAT ENTERPRISES SHOULD TAKE INTO ACCOUNT THE GENERAL POLICY OBJECTIVES OF THE MEMBER COUNTRIES IN WHICH THEY OPERATE (GENERAL POLICIES, PARA. 1).

IN THE SECTION "EMPLOYMENT AND INDUSTRIAL RELATIONS" IT IS SPECIFIED THAT "ENTERPRISES SHOULD WITHIN THE FRAMEWORK OF LAW, REGULATIONS AND PREVAILING LABOR RELATIONS AND EMPLOYMENT PRACTICES, IN EACH OF THE COUNTRIES IN LIMITED OFFICIAL USE

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WHICH THEY OPERATE, IN CONSIDERING CHANGES IN THEIR OPERATIONS WHICH WOULD HAVE MAJOR EFFECTS UPON THE LIVELIHOOD OF THEIR EMPLOYEES, IN PARTICULAR IN THE CASE OF THE CLOSURE OF AN ENTITY INVOLVING COLLECTIVE LAY-OFFS OR DISMISSALS, PROVIDE REASONABLE NOTICE OF SUCH CHANGES TO REPRESENTATIVES OF THEIR EMPLOYEES, AND WHERE APPROPRIATE TO THE RELEVANT GOVERNMENTAL AUTHORITIES, AND COOPERATE WITH THE EMPLOYEE REPRESENTATIVES AND APPROPRIATE GOVERNMENTAL AUTHORITIES SO AS TO MITIGATE TO THE MAXIMUM EXTENT PRACTICABLE ADVERSE EFFECTS".

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PASS EB FOR BOEKER; TREASURY FOR GRIFFIN

2. A PARENT COMPANY IS OBLIGED TO HELP ITS SUBSIDIARIES TO FULFILL THEIR OBLIGATIONS. PARA. 8 OF THE INTRODUCTION TO THE GUIDELINES LAYS DOWN THAT "THE GUIDELINES ARE ADDRESSED TO THE VARIOUS ENTITIES WITHIN THE MULTINATIONAL ENTERPRISE (PARENT COMPANIES AND/OR LOCAL ENTITIES) ACCORDING TO THE ACTUAL DISTRIBUTION OF RESPONSIBILITIES AMONG THEM ON THE UNDERSTANDING THAT THEY WILL COOPERATE AND PROVIDE ASSISTANCE TO ONE ANOTHER AS NECESSARY TO FACILITATE OBSERVANCE OF THE GUIDELINES. THE WORD "ENTERPRISE" AS USED IN THESE GUIDELINES REFERS TO THESE VARIOUS ENTITIES IN ACCORDANCE WITH THEIR RESPONSIBILITIES".

THE GUIDELINES THUS RECOGNIZE THAT THE DISTRIBUTION OF

RESPONSIBILITIES AS BETWEEN THE PARENT COMPANY AND THE LOCAL ENTITIES IS OF GREAT IMPORTANCE. IN THE CASE OF A MULTINATIONAL ENTERPRISE WHOSE PARENT COMPANY HAS ALL THE DECISION-MAKING POWERS, THE PARENT COMPANY MUST PROVIDE ASSISTANCE TO THE LOCAL SUBSIDIARY TO ENABLE IT TO FULFILL ITS OBLIGATIONS TOWARDS ITS EMPLOYEES. THIS MEANS THAT IN THE CASE OF THE CLOSURE OF A SUBSIDIARY THE LIMITED OFFICIAL USE

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PARENT COMPANY MUST MAKE A CONTRIBUTION TOWARDS FINANCING THE SUBSIDIARY'S DEBTS SO AS TO "MINIMIZE AND RESOLVE DIFFICULTIES WHICH MAY ARISE FROM ITS VARIOUS OPERATIONS" (PARA. 3 OF THE PREAMBLE TO THE DECLARATION).

3. ALTHOUGH OBSERVANCE OF THE GUIDELINES IS VOLUNTARY (PARA. 6 OF THE INTRODUCTION), THESE GUIDELINES ARE NONETHELESS RECOMMENDATIONS OF OUR GOVERNMENTS TO MULTINATIONAL ENTERPRISES AND RULES OF CONDUCT FOR THEM.

IN ACCORDANCE WITH THE CONSIDERATION THAT "COOPERATION BY MEMBER COUNTRIES CAN IMPROVE THE FOREIGN INVESTMENT CLIMATE, ENCOURAGE THE POSITIVE CONTRIBUTION WHICH MULTINATIONAL ENTERPRISES CAN MAKE TO ECONOMIC AND SOCIAL PROGRESS, AND MINIMIZE AND RESOLVE DIFFICULTIES WHICH MAY ARISE FROM THEIR VARIOUS OPERATIONS", THE BELGIAN GOVERNMENT TAKES THE VIEW THAT IT IS NECESSARY WITHIN THE FRAMEWORK OF SUCH COOPERATION TO DEVISE THE MEANS TO COMPEL A PARENT COMPANY TO FULFILL ITS OBLIGATIONS.

ANNEX II

THE FACTS

1. THE BELGIAN JOINT STOCK COMPANY BADGER (BELGIUM) N.V. IS A 100 PERCENT SUBSIDIARY OF THE COMPANY BADGER CO. INC. THE LATTER IS WHOLLY OWNED BY RAYTHEON, AND ITS HEAD OFFICE IS IN CAMBRIDGE, MASSACHUSETTS, USA.

2. THE BADGER GROUP'S OPERATIONS IN EUROPE ARE HANDLED BY A SUBSIDIARY IN LONDON - WHICH ALSO CONTROLS BADGER FRANCE - AND BY THE HAGUE GROUP OF COMPANIES WHICH COMPRISES BADGER B.V. AT THE HAGUE, BADGER BELGIUM N.V. IN ANTWERP, BADGER GMBH IN WIESBADEN AND BADGER ITALIANA SPA IN MILAN.

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THE GROUP AS A WHOLE HAS SOME 2,700 EMPLOYEES THROUGHOUT THE WORLD. ITS ACTIVITIES ARE DEVOTED TO DESIGN AND CONSTRUCTION SERVICES FOR PETROLEUM AND CHEMICAL WORKS.

3. ALL THE IMPORTANT DECISIONS, E.G. CONTRACTS, SELLING PRICES, FINANCIAL TRANSACTIONS, THE ESTABLISHMENT OF PAY SCALES AND STAFF POLICY, ARE TAKEN BY THE PARENT COMPANY IN THE UNITED STATES.

THE FACT THAT BADGER (BELGIUM) WAS COMPLETELY "INTEGRATED" AND HAD NO DECISION-MAKING POWERS WAS RECOGNIZED BY THE TRIBUNAL DE COMMERCE (COMMERCIAL COURT) IN ANTWERP IN ITS JUDGMENT OF 14TH FEBRUARY, 1977. APPROVAL OF A COMPOSITION WITH ITS CREDITORS WAS REFUSED BY THE COURT. THIS IS A JOINT AGREEMENT UNDER THE TERMS OF WHICH THE ENTERPRISE WHICH HAS SUSPENDED PAYMENTS, BUT WHICH IS NOT GUILTY OF FRAUD OR A SERIOUS OFFENCE, AVOIDS BANKRUPTCY BY OBTAINING FROM ITS CREDITS PARTIAL REMISSION OF ITS DEBTS OF TIME FOR PAYMENT, OR EVEN BOTH THESE CONCESSIONS.

BADGER (BELGIUM) ACCEPTED THE JUDGMENT AND DID NOT APPEAL.

4. THE BADGER (BELGIUM) N.V. COMPANY WAS FORMED IN 1965. AT THE TIME OF ITS CLOSURE IN JANUARY 1977, 250 HIGHLY SKILLED EMPLOYEES WERE WORKING FOR THE ENTERPRISE. ON 13TH OCTOBER, 1976 THE STAFF WAS INFORMED THAT ORDERS WERE NOT FORTHCOMING AND THAT THE ENTERPRISE WAS EXPERIENCING DIFFICULTIES IN CONTINUING TO PERATE. AN ATTEMPT WOULD BE MADE TO FIND VALID SOLUTIONS, IN CONSULTATION WITH THE GOVERNMENT.

ON 23RD DECEMBER, 1976 THE STAFF WAS INFORMED OF THE FACT THAT EFFORTS TO FIND A NEW OWNER FOR THE FIRM HAD FAILED AND THAT THE FIRM WOULD SHORTLY BE CLOSED DOWN.

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5. ON 12TH JANUARY, 1977 THE STAFF WAS INFORMED THAT THE SHAREHOLDERS HAS DECIDED TO CLOSE DOWN THE ENTERPRISE. THE MEMBERS OF THE MANAGEMENT OF THE PARENT COMPANY RECOGNIZED THE FACT THAT THIS DECISION WAS TAKEN BY THEM.

ON 14TH JANUARY, 1977 THE EMPLOYEES RECEIVED LETTERS TERMINATING THEIR INDIVIDUAL CONTRACTS. THE JANUARY SALARIES WERE PAID.

6. COMPULSORY WINDING UP OF BADGER (BELGIUM) HAS BEEN ORDERED AND IT HAS NOT PAID ITS CREDITORS. THE COMPENSA-

TION OWED TO MEMBERS OF STAFF IN THE CASE OF THE CLOSURE
OF AN ENTERPRISE AMOUNTS, ACCORDING TO BELGIAN LAW,
WHICH MAKES NO DISTINCTION HERE BETWEEN NATIONAL AND
FOREIGN ENTERPRISES, TO BF 250 MILLION (\$6,500,000)
(COMPENSATION FOR DISMISSAL PLUS ADDITIONAL COMPENSA-
TION FOR WORKERS IN THE CASE OF THE CLOSURE OF AN ENTER-
PRISE). THE PARENT COMPANY HAS REFUSED TO INTERVENE TO
SETTLE THE LIABILITIES OF ITS SUBSIDIARY NOT COVERED BY
THE AVAILABLE ASSETS. END TEXT
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